INDIANA DEATH PENALTY FACTS

(Last Updated 11/21/07)

INTERNATIONALLY

- ❒ Nearly two-thirds of the world's nations have abolished the death penalty in law or in practice, including more than 30 in the past decade.

NATIONALLY

- ❒ 38 states, plus the federal government and the military, have a death penalty statute on their books. Twelve states do not.

INDIANA

INDIANA'S DEATH PENALTY STATUTE

Its History

- ❑ In 1972, the U.S. Supreme Court in *Furman v. Georgia* held all state death penalty sentencing statutes were unconstitutional under the Eighth Amendment's cruel and unusual clause because they allowed for arbitrary and capricious imposition of death and left too great a risk that improper factors such as race could affect the sentencing decision. The sentences of the 7 men on Indiana's death row at the time of this decision were all reduced to life in prison.

- ❑ In 1973, the Indiana General Assembly enacted a new death penalty sentencing statute to replace the statute struck down by the U.S. Supreme Court in *Furman*.

- ❑ In 1976, the U.S. Supreme Court in *Woodson v. North Carolina* struck down North Carolina's death penalty sentencing statute, which was similar to Indiana's statute. In *Woodson* and accompanying cases, the Court indicated that sentencing in capital cases requires that the sentencer's discretion be carefully guided and channeled, while at the same time providing for individualized decisions for each defendant.

- ❑ In 1977, the Indiana Supreme Court struck down Indiana's 1973 death penalty sentencing statute based on the U.S. Supreme Court decision in *Woodson*. The death sentences of the 8 men on Indiana's death row were set aside.

- ❑ On October 1, 1977, a new Indiana death penalty sentencing statute, modeled on statutes upheld by U.S. Supreme Court, took effect. With modifications, (see "Other Changes," below) it remains in effect today.

How It Works

In Indiana, the death penalty is available only for the crime of murder, and is available for murder only if the prosecution can prove the existence of at least one of 16 "aggravating circumstances" identified by the Indiana General Assembly. These circumstances are set out in the state's death penalty statute, at IC 35-50-2-9. In order to seek the death penalty, the prosecutor must allege the existence of at least one of the aggravating circumstances set out in the statute.

If the case proceeds to trial, and the defendant is convicted of murder, the trial proceeds to a second phase to determine the appropriate penalty. The jury hears evidence regarding the existence of the alleged aggravating circumstance(s) and any mitigating circumstances – facts which would lead them to recommend a lesser sentence. They are required to return a special verdict form indicating whether they unanimously find the existence of each charged statutory aggravating circumstance beyond a reasonable doubt. They are not allowed to recommend that the defendant be sentenced to death or life without parole unless they unanimously find that the state has proved the existence of at least one alleged aggravating circumstance beyond a reasonable doubt, and also find that the aggravating circumstance(s) outweigh the mitigating circumstances. If the jury unanimously agrees on their sentencing "recommendation," the trial court must follow it. If they cannot agree on the sentence, but unanimously agree that an aggravating circumstance exists, the Court is free to sentence the defendant to either a term of years, life without parole, or death.

If a death sentence is imposed, it may be subjected to three levels of appellate review: Direct appeal in the Indiana Supreme Court, focusing on legal issues; state post-conviction review, which can also look at factual issues such as whether trial counsel competently represented the defendant, whether evidence was suppressed, and whether any witnesses have recanted their testimony; and federal habeas corpus review, which focuses on federal constitutional issues. A prisoner may also request clemency from the Governor. The first level of review – direct appeal – is mandatory, but the prisoner may choose to forego the others.

If a prisoner is executed, the State of Indiana will strap him or her to a gurney, insert an IV line, and inject into that line a series of three chemicals: (1) sodium thiopental, an ultra-short-acting barbiturate, to render him or her unconscious; (2) pancuronium bromide, to paralyze voluntary and reflex muscles; and (3) potassium chloride, to stop his or her heart. Defense attorneys and others have raised concerns that the dosage of sodium thiopental may be inadequate or may wear off too quickly, and that the pancuronium bromide, which renders the prisoner unable to move or speak, may mask signs of consciousness and excruciating pain. The U.S. Supreme Court will hear argument this term on whether this protocol is cruel and unusual.

Changes Through the Years

- **Defense Representation:** In 1989, the General Assembly created the Indiana Public Defender Commission to set standards for the appointment

and compensation of attorneys appointed to represent persons facing the death penalty, and authorized the Commission to reimburse counties 50% of their expenditures for defense representation. On January 1, 1992, the Indiana Supreme Court's amendments to Criminal Rule 24 setting mandatory standards for the appointment and compensation of trial and appellate counsel in death penalty cases took effect.

- **Availability of Life Without Possibility of Parole:** In 1993, the General Assembly authorized Life Without Parole as a sentencing option in capital murder cases, and in 1994, prosecutors were given the authority to ask for LWOP without requesting a death sentence.

- **Method of Execution:** In 1995, the General Assembly changed the method of execution from electrocution to lethal injection.

- **Jury Decisionmaking:** Prior to 2002, a capital jury's sentencing recommendation was not binding on the trial court. This change was made in anticipation of *Ring v. Arizona*, in which the U.S. Supreme Court held that any fact that makes a defendant eligible for the death penalty must be found by a unanimous jury beyond a reasonable doubt. Although the Indiana Supreme Court has held that the statute satisfies *Ring*, defense attorneys continue to argue that it does not go far enough because juries are not required to unanimously find that aggravating circumstances outweigh mitigating circumstances.

- **Age of Eligibility:** In 1987, the General assembly raised the minimum age of eligibility for the death penalty from 10 to 16. In 2002, they raised it from 16 to 18. In 2005, in *Roper v. Simmons*, the U.S. Supreme Court held that executing defendants who were under the age of 18 at the time of their crime is cruel and unusual, in violation of the 8th Amendment, because, as a result of their reduced mental capacity, they are less morally culpable and less capable of being deterred from crime. (*See also Mentally Retarded Defendants and Mentally Ill Defendants below)*

- **Mentally Retarded Defendants:** In 1994, the General Assembly made mentally retarded individuals ineligible for death or life without parole. In 2002, in *Atkins v. Virginia*, the U.S. Supreme Court held that executing mentally retarded defendants is cruel and unusual, in violation of the 8th Amendment, because, as a result of their reduced mental capacity, they are less morally culpable and less capable of being deterred from crime. (*See also Age of Eligibility and Mentally Ill Defendants)*.

- **Mentally Ill Defendants:** The Bowser Commission, a bi-partisan interim study commission, was created to study the appropriateness of executing defendants with severe mental illness. Over the summer of 2007, they heard testimony from a number of mental health professionals, lawyers, and law professors. The result was a carefully drafted bill that would narrowly define

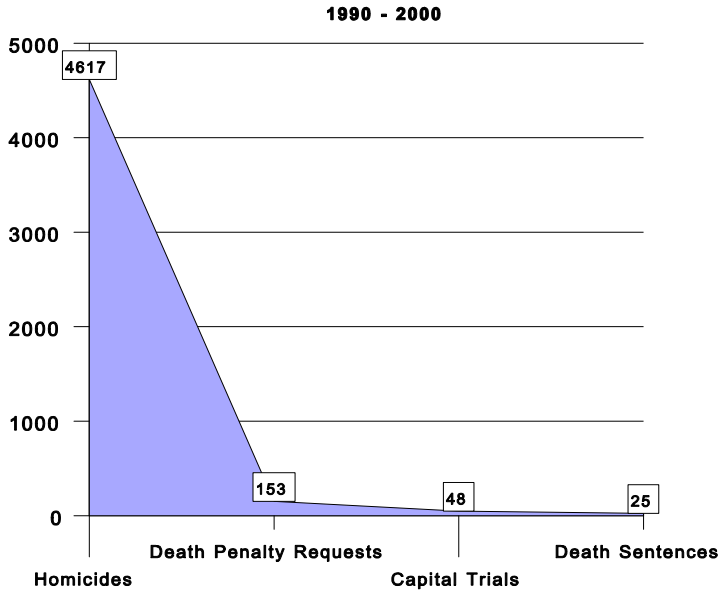
and identify those suffering from disorders so severe as to warrant exempting them from the death penalty.

INDIANA'S DEATH PENALTY IN PRACTICE

Charging, Trial, and Sentencing

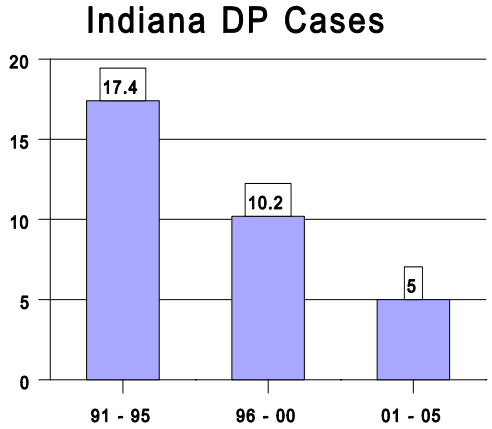
The prosecution is not required to seek the death penalty in every case in which an aggravating circumstance might exist and the defendant is eligible for death. The determination whether to seek the death penalty against a particular defendant on a particular murder charge is left to the discretion of the prosecuting attorney for each Indiana county.

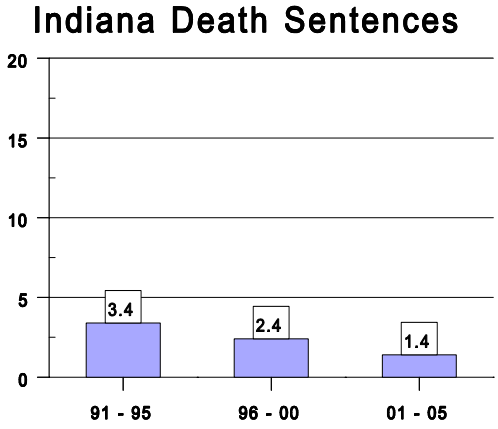
Similarly, not every case in which the death penalty is sought proceeds to trial. As with other cases, prosecuting attorneys are given discretion to enter into plea negotiations, offering the defendant a sentence less than death in exchange for a guilty plea. More capital cases are resolved by plea agreement than by trial.



The chart at the right demonstrates how this works in practice. During the years 1990 through 2000, according to FBI Uniform Crime Reports, there were 4617 murders and non-negligent homicides throughout the state of Indiana. No information is available regarding how many of these homicides were eligible for a death penalty request, meaning that one or more of the 16 aggravating circumstances could be alleged and the defendant was 18 or older. Prosecuting attorneys actually requested the death penalty in 153 of these homicides, 48 of the cases proceeded to a capital trial, and 25 actually resulted in death sentences.

Both nationally and in Indiana, death penalty prosecutions and death sentences have been declining for a variety of reasons, including the availability of Life Without Parole. Indiana prosecutors currently file an average of only 5 death penalty cases per year throughout the state, and Indiana juries impose an average of only 1.4 death sentences per year. The charts on the next page show the decline over the past 15 years.





There are currently 11 death penalty cases pending trial, sentencing, retrial, or re-sentencing in Indiana. No new capital cases have been filed anywhere in the state of Indiana for over a year.

Death Sentences Imposed Since 1977

92- sentenced to death
12- currently under sentence of death: 11 men and 1 woman.
47- no longer on death row due to reversals by the appellate courts, commutation by the governor, or dismissal of the death penalty by agreement of the State of Indiana
4 - death sentences vacated in proceedings which the State of Indiana is appealing
3 - awaiting a new trial or sentencing proceeding at which death is still a possible penalty
5 - died on death row from causes other than execution
2 - executed in other states for murders committed there.
19 - executed by State of Indiana:

4 were executed after waiving non-mandatory appeals:
Steven Judy - 1981
William Vandiver - 1985
Robert Smith - 1998.
Gerald Bivins - 2001

15 were executed after completing all appellate levels:
Gregory Resnover - 1994
Tommie Smith - 1996
Gary Burris - 1997
D. H. Fleenor - 1999
Jim Lowery - 2001
Kevin Hough - 2003
Joseph Trueblood - 2003
Donald Ray Wallace - 2005
Bill Benefiel - 2005
Gregory Scott Johnson - 2005
Kevin Conner - 2005

Alan Matheney - 2005
Marvin Bieghler - 2006
David Woods - 2007
Michael Lambert – 2007

More than three times as many men have had their death sentences vacated as have been executed by the State of Indiana after exhausting their appeals.

PUBLIC OPINION

- ❒ Although the majority of Americans say they generally support the death penalty, polls show that more people actually prefer the option of life without parole, which was adopted in Indiana in 1993. While life without parole in some states means only that an inmate will not be eligible for parole for at least 25 years, in Indiana it means life without any possibility of parole.

- ❒ A survey of Indiana citizens conducted in 1993 shortly before Indiana adopted life without parole as a sentencing option for murder found that 56% of those polled said they strongly supported the death penalty and 76% said they generally supported the death penalty. However, when asked to choose between the death penalty and life without parole, 45% responded that they would prefer life without parole, compared to 40% who preferred death. When a requirement of prison work with money going to victims' families was added, 62% responded that they would prefer this option to the death penalty, compared to only 26% who still favored death. [The study was conducted by Indiana University Criminal Justice Professors Ed McGarrell and Marla Sandys. McGarrell currently serves as Director of the Hudson Institute's Crime Control Policy Center.]

- ❒ A 2007 survey of Indiana citizens conducted for the American Bar Association showed that 61% support a moratorium on executions so that the fairness and accuracy of the process is studied. Majority support for a moratorium was found in all geographic regions and across party lines.

DETERRENCE

- ❒ In 1999, the average murder rate per 100,000 population among death penalty states was 5.5, compared with a rate of only 3.6 among non-death penalty states. Indiana's reported rate for 1999 was 6.6. According to FBI Uniform Crime Reports, the South, which accounts for 80% of U.S. executions, consistently has the highest murder rate, while the Northeast, which includes New York and Massachusetts and which accounts for fewer than 1% of executions, has the lowest murder rate.

- A study of homicide rates by the New York Times found that "during the last 20 years, the homicide rate in states with the death penalty has been 48 percent to 101 percent higher than in states without the death penalty. The study found that over that period, "homicide rates had risen and fallen along roughly symmetrical paths in the states with and without the death penalty, " suggesting that the presence or absence of the death penalty has little effect on homicide rates. *States With No Death Penalty Share Lower Homicide Rates,* Raymond Bonner & Ford Essenden, New York Times, Sept. 22, 2000.

- Research into the deterrent effect of the death penalty disagree, and provide no conclusive evidence that the death penalty deters murder or violent crime. A number of studies conducted by economists have been released in recent years, suggesting that the death penalty may save from three to eighteen lives per execution. These studies apply the principles of econometrics, and are based on the premise that as the cost of an activity, in this case murder, increases, the activity itself will decrease. Researchers from other disciplines dispute these findings, arguing that this premise does not apply to the world of violent crime. These researchers argue that those who commit murder do not engage in cost-benefit analysis beforehand, and that the chance of being sentenced to death, let alone being executed, is so small and remote that it cannot serve as an effective deterrent.

- A 1995 national survey of police chiefs found that 67% of the chiefs surveyed did not believe that the death penalty significantly reduces the number of homicides; 82% said that they do not believe that murderers think about the range of possible punishments before committing homicide; and 67% said the death penalty was not one of the most effective law enforcement tools. *On the Front Lines: Law Enforcement Views on the Death Penalty,* Death Penalty Information Center, 2/95.

COST

- A 1988 in-depth investigative report of the cost of death penalty cases in Florida, conducted by *Miami Herald* reporters, found that the state had spent at least $57,215,210 on the death penalty since 1973, to achieve 18 executions. This made the cost per execution over $3 million dollars, more than 6 times the cost of imprisoning each man executed for 40 years at maximum security.

- The most comprehensive study of a state's costs for the death penalty was commissioned by the North Carolina Administrative Office of the Courts and conducted by Duke University professors in 1993. The professors concluded that the cost of a capital prosecution through to execution was more than double the cost of a noncapital prosecution *plus* the cost of incarceration. Factoring in the cost of capital cases that did not result in a

death sentence or an execution, they found that “the extra cost per death penalty imposed is over a quarter million dollars, and per execution exceeds $2 million.”

- ❒ In a report from the Judicial Conference of the United States on the costs of the federal death penalty, it was reported that the *defense* costs were about 4 times higher in cases in which death was sought than in comparable cases in which death was not sought. The report also indicated that the *prosecution* costs in death penalty cases were 67% higher than the defense costs, and these costs did not include the cost of investigative services provided by law enforcement agencies.

- ❒ A study conducted for Indiana Governor Frank O’Bannon in 2002 found that a the cost of prosecuting and executing a murder defendant was 30 – 37.5% more expensive than the cost of a non-capital prosecution, appeals, and lifetime incarceration. The cost of a death penalty trial and direct appeal alone is more than five times the cost of a life without parole trial and direct appeal.

INNOCENCE

- ❒ Since 1970, more than 120 people in the U.S. have been exonerated and released from death row after being sentenced to death. There is no way of knowing how many of the more than 1000 people executed in the U.S. in that time have also been innocent.

- ❒ In Indiana, 2 men have been sentenced to death and later acquitted at new trials.

    - Larry Hicks was convicted of murder and sentenced to death in Lake County in 1978. Two weeks before his scheduled execution in 1979, Larry Hicks sat on death row without an attorney. An attorney visiting another inmate discovered Hicks and petitioned trial court for new trial. A new trial was granted, and Hicks was acquitted and released.

    - Charles Smith was convicted of murder and sentenced to death in Allen County in 1983. In 1989, the Indiana Supreme Court reversed his conviction and sentence due to ineffective assistance of trial and appellate counsel. On retrial, Smith, who had come within three days of being executed, was acquitted on all counts.

RACE AND THE DEATH PENALTY IN INDIANA

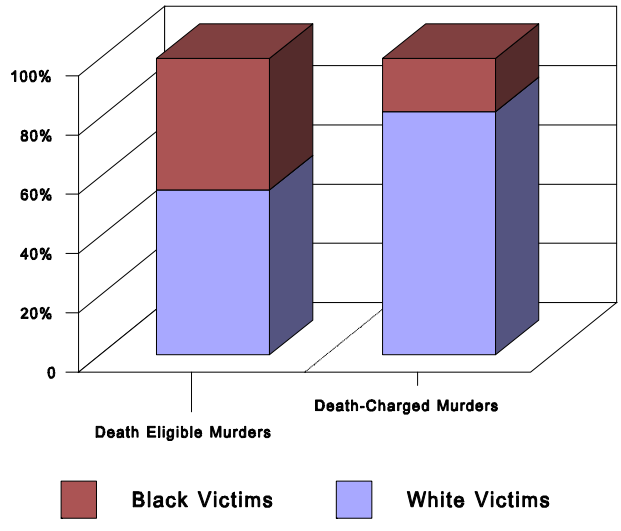
- ❒ Racial statistics for Indiana’s death row mirror those of much of the nation’s condemned. Although U.S. Census figures put Indiana’s minority

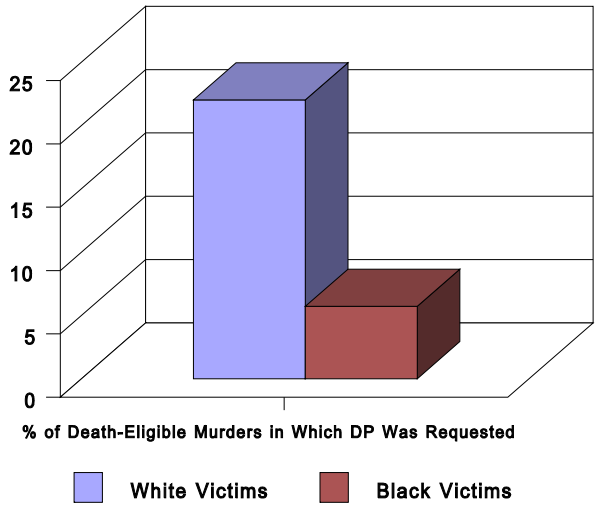
groups at less than 10% of the general population, they make up 20% of those currently under a sentence of death in Indiana. Also typical of death rows across the nation, the overwhelming majority (87%) of those under a death sentence in Indiana were sentenced to death for killing white victims.

- The 2002 study conducted for Gov. O'Bannon found that offenders who kill white victims are likely to be sentenced more severely and are more likely to be sentenced to death than offenders who kill non-white victims. Specifically, offenders convicted of murdering at least one white victim were 6 times more likely to receive the death penalty than those convicted of murdering only non-white victims, and were nearly 3 times more likely to receive a sentence of life without parole. The research team indicated that additional research and analyses would help determine whether race-neutral case factors are responsible for this apparent disparity, or whether similar defendants convicted of similar murders are in fact treated differently based upon the race of their victims. No further findings have been released.

- Data on the race of defendants and victims in all Indiana murders for which the death penalty could be requested is not available. However, attorneys for Gregory Van Cleave studied charging decisions in death-eligible homicides in Marion County for a period from 1979 through 1988. They determined that there were 187 solved, death-eligible homicides during this period in which victims were either black or white. The charts below illustrate their analysis.

Victims in 104 of these death-eligible cases, or 55.6%, were white, while the 23 cases involving white victims made up 82% of the total of 28 cases in which the death penalty was actually sought.





Another way of looking at this disparity is that the death penalty was requested in only 5.7% of death-eligible cases involving black victims, compared to 22% of death-eligible cases involving white victims. This means that the odds of the death penalty being requested for a white victim were 3.8 times higher than the odds of it being sought for a black victim.

Current information available at Indiana Public Defender Council web-site:
www.in.gov/pdc/general/dpinfo.html